

HOUSE BILL 1475

By Fitzhugh

AN ACT to amend Tennessee Code Annotated, Title 4, Chapter 31; Title 4, Chapter 51; Title 8, Chapter 4; Title 9, Chapter 4 and Title 49, relative to lottery funded capital outlay projects for K-12 educational facilities pursuant to Article XI, Section 5 of the Constitution of Tennessee. This act makes appropriations for capital outlay projects for K-12 educational facilities for an indefinite period of time.

WHEREAS, the voters of the State of Tennessee authorized the Legislature to establish a state lottery for the purpose of providing financial assistance to citizens of Tennessee to attend post-secondary education institutions located within Tennessee; and

WHEREAS, the voters of the State of Tennessee authorized the Legislature in Article XI, Section 5 of the Constitution of Tennessee to use excess from the net proceeds from the lottery to be used for capital outlay projects for K-12 educational facilities; and

WHEREAS, the use of such excess net proceeds must be used to support improvements and enhancements for educational programs, and

WHEREAS, the use of such excess net proceeds to provided assistance to Tennessee counties and municipalities which operate local education agencies is determined to be in furtherance of a public purpose; now, therefore,

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 4, Chapter 31, is amended by adding the following language as a new part:

Section 4-31-\_\_\_\_

As used in this part, unless the context otherwise requires, the definitions established in part 10 of this chapter shall apply.

Section 4-31-\_\_\_\_.

(a) There is hereby created the Education Revolving Loan (ERL) subaccount within the lottery capital outlay account provided for in § 4-31-1002.

(b) The authority shall allocate funds to the ERL subaccount from deposits to the account. Additionally, the authority shall deposit specific appropriations and all loan repayments to the subaccount. It is the intent that this is a self-sustaining revolving loan program. The authority annually shall report on the ERL program and may make funding and programmatic recommendations to the General Assembly.

Section 4-31-\_\_\_\_.

(a)

(1) The authority has the power and authority to finance education projects for a local government unit under a loan agreement or agreements with funds from the ERL subaccount. The department, in conjunction with the authority, shall develop the application and review procedure for loans under this program and shall make recommendations to the authority as to loan applications. The authority and the department shall have such other authority as may be necessary and appropriate for the exercise of the powers and duties conferred by this part.

(2) Any local government unit is authorized by resolution of its governing body to enter into such loan agreement with the authority with respect to an education project upon such terms and conditions as may be determined by the authority and department and by the governing body of such local government unit, notwithstanding and without regard to the restrictions, prohibitions or requirements of any other law, whether public or private. Local government units may enter into loan agreements under the provisions of this part notwithstanding and without regard to any limit on indebtedness provided by law. Counties

having a city or cities operating schools independent of the county or having special school districts operating schools independent of the county shall not be required to share proceeds of any loan agreement for an education project, notwithstanding any other law to the contrary. However, any county-wide source of revenue used for payment of debt service on the loan agreement shall be established to provide for such independent systems on an ADA basis.

(3) Each such loan agreement shall provide the terms and conditions under which the authority shall lend to the local government unit funds to finance the education project to which such loan agreement relates. Such conditions shall include annual audit requirements and may include the pledging by the local government unit of state-shared taxes.

(b)

(1) Whenever, and as often as, a local government unit enters into a loan agreement with the authority under the provisions of this part, the governing body of such local government unit shall provide by resolution for the levy and collection of a tax upon all taxable property within the local government unit sufficient to pay when due all amounts payable under the loan agreement as and when such amounts become due and payable, including all fees and charges due the authority under such loan agreement and, furthermore, to pledge such tax and the full faith and credit of such local government unit to such payments; provided, that a special school district shall provide for the collection of such a tax upon the levy of the tax by the general assembly. Such tax shall be assessed, levied, collected and paid in like manner as other taxes of the local government unit. Such tax shall not be included within any statutory or other limitation of rate or amount for such local government unit, but shall be excluded

therefrom and be in addition thereto and in excess thereof, notwithstanding and without regard to the prohibitions, restrictions or requirements of any other law, whether public or private. There shall be set aside from such tax levy into a special fund an amount sufficient for the payment of the annual amount due under any such loan agreement, and the money in such funds shall be used exclusively for such purpose and shall not be used for any other purpose until such amount has been paid in full.

(2) The local government unit shall have the power and authority by resolution of the governing body of the local government unit to pledge or assign to the authority all or any portion of such taxes, in addition to its share of the state-shared taxes as the meaning is established by § 4-31-102 that are not otherwise obligated. In the event any local government unit having entered into a loan agreement pledging state-shared taxes pursuant to this part shall fail to remit funds in accordance with the payments established by the authority, the commissioner of finance and administration, after notice from the authority of such event, shall, without further authorization, deduct from any state-shared taxes which are otherwise apportioned to the local government unit the amount required to make the local government unit current with respect to the unpaid amounts due the authority under the loan agreement and pay such amount to the authority. The authority shall deliver to the local government unit a notice of such deduction. Furthermore, such local government unit failing to remit funds in accordance with the payments established by the authority as aforementioned shall levy and assess such additional tax as provided in subdivision (b)(1) necessary to meet the obligation of the local government unit according to its loan agreement.

(3) The local government unit is authorized to:

(A) Set aside reserves and agree to the maintenance, regulation and disposition thereof;

(B) Agree to limitations on the purpose to which the proceeds of the loan may be applied and the manner in which the same shall be disbursed and applied;

(C) Recognize and give effect to such assignment upon receipt of any notice of assignment by the authority of the fees and charges payable to the authority under a loan agreement, and to pay to the assignee thereof the fees and charges then due or which may become due under the loan agreement which have been so assigned by the authority; and

(D) Agree to any other matters of like or different character, which in any way affect the security or protection of the fees and charges required to be made under the terms of an agreement with the authority.

(4) The state board of education, jointly with the state funding board, may enter into a loan agreement with the authority under the provision of this chapter and of title 9, chapter 9.

(5)

(A) Any pledge made by the authority pursuant to this chapter, or by a local government unit pursuant to a loan agreement, or by a local education agency in connection therewith shall be valid and binding from the time when the pledge is made, the moneys or property so pledged and thereafter received by the authority or local government unit, as applicable, shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act. The lien of any such pledge

shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the authority, local government unit, or local education agency as applicable, irrespective of whether such parties have notice of those claims.

(B) Recording of the resolution or any other instrument by which a pledge is created is not required.

SECTION 2. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 3. This act shall become law on July 1, 2007, the public welfare requiring it.